

### **REMARKS**

Reconsideration of the application in view of the following remarks is respectfully requested. No claims are currently being amended, canceled or added. Therefore, claims 1-35 and 37-51 are pending in the application.

By way of this amendment, Applicant has made a diligent effort to place the claims in condition for allowance. However, should there remain any outstanding issues, it is respectfully requested that the Examiner telephone the undersigned at (858) 552-1311 so that such issues may be resolved as expeditiously as possible.

#### **Claim Rejections under 35 U.S.C. § 103**

Claims 1-35 and 37-51 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,321,188 to Hayashi et al. ("Hayashi et al.") in view of U.S. Patent Application Publication No. 2002/0093435 A1 to Baron ("Baron"). Applicant respectfully traverses these rejections.

#### **Baron is removed from consideration as prior art:**

Baron qualifies as prior art under 35 U.S.C. § 102(e). In order to overcome this rejection under 103(a)/102(e), Applicant submits evidence under 37 C.F.R. 1.131 establishing conception of the claimed invention prior to the effective prior art date of Baron coupled with due diligence from prior to said date to a subsequent constructive reduction to practice (i.e. the filing of the application). Applicant asserts that the evidence submitted herewith removes Baron as a reference, which means the rejections should be withdrawn.

The effective prior art date of Baron under 35 U.S.C. § 102(e) is its filing date, i.e., January 18, 2001. The evidence submitted pursuant to 37 C.F.R. 1.131 is in the form of the following declaration: the Declaration of Richard E. Wawrzyniak (hereinafter referred to as the "Wawrzyniak declaration"). Per MPEP 715.07, some of the dates have been blocked out of the exhibits attached to the Wawrzyniak declaration; however, all blocked out dates are prior to January 18, 2001.<sup>1</sup>

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<sup>1</sup> Wawrzyniak declaration, paragraph 5.

As established in the Wawrzyniak declaration, the invention was clearly conceived prior to January 18, 2001. This is evidenced by the fact that the final draft of the patent application was sent to Patent Counsel for Sony Electronics, Inc. (i.e. one of the assignees) prior January 18, 2001, to obtain the inventor's signature on the Declaration-Power of Attorney and the Assignment.<sup>2</sup> The Wawrzyniak declaration includes a copy of the specification and claims of the final draft of the patent application that was sent, which is believed to be identical to the specification and claims that were filed in the USPTO on February 15, 2001.<sup>3</sup> This evidence unquestionably establishes that the invention recited in the currently pending claims was conceived prior to January 18, 2001, since the final draft of the application was sent to Sony Electronics, Inc. for execution prior to January 18, 2001, and was not further revised prior to filing.<sup>4</sup> Furthermore, the Wawrzyniak declaration also provides evidence of attorney due diligence from prior to January 18, 2001, to the subsequent filing of the application in the USPTO on February 15, 2001. Namely, in order to follow-up with obtaining the executed Declaration-Power of Attorney and the Assignment, the final draft of the patent application was again sent, this time directly to the inventor, on February 9, 2001.<sup>5</sup> The executed formal papers (i.e. the executed Declaration-Power of Attorney and the Assignment) were received from Sony Electronics, Inc. on February 14, 2001.<sup>6</sup> The application was then immediately filed the next day on February 15, 2001.<sup>7</sup>

Therefore, it is respectfully submitted that Applicant has proven conception of all of the limitations specified in the pending claims, as well as due diligence, as required under 37 C.F.R. 1.131. As such, Applicant respectfully submits that since Baron is removed from consideration as prior art, all of the present rejections are overcome and should be withdrawn.

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<sup>2</sup> Wawrzyniak declaration, paragraphs 7-11.

<sup>3</sup> Wawrzyniak declaration, paragraph 10.

<sup>4</sup> Wawrzyniak declaration, paragraph 10.

<sup>5</sup> Wawrzyniak declaration, paragraphs 12-13.

<sup>6</sup> Wawrzyniak declaration, paragraph 14.

Additional reasons for Independent Claim 49:

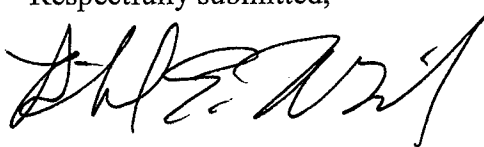
In addition, the Examiner rejected Applicant's independent claim 49 on the basis of Hayashi et al.'s col. 16, lines 44-53. *As Applicant has previously pointed out this portion of Hayashi et al. simply does not disclose all of the limitations of Applicant's independent claim 49.* This is another reason that the rejection of independent claim 49 should be withdrawn. Applicant respectfully requests that the Examiner respond to this assertion by Applicant should the rejection be maintained.

**CONCLUSION**

Applicants submit that the above remarks place the pending claims in a condition for allowance. Therefore, a Notice of Allowance is respectfully requested.

Respectfully submitted,

Dated: July 20, 2006



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**Attachments:**

**Wawrzyniak declaration with Exhibits A-C**

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<sup>7</sup> Wawrzyniak declaration, paragraph 15.